

PREPARING TO TESTIFY¹
Reminders About Preparing to Testify

Remember that you are not appearing "for" or "against" either party, even though you were subpoenaed by one of the parties to the dispute. Your function, as a USDA employee, is to present the documents requested and answer factual questions, not to help or hurt either of the parties, or to advocate on their behalf. NEVER GIVE AN OPINION AS TO HOW YOU FEEL THE CASE SHOULD BE DECIDED.

1. Before your appearance, try to review the documents you were asked to bring with you, if any, and recall the circumstances about which you are being asked to testify, so that you can recall the facts more accurately when you are asked. Be careful to protect the parties' privacy rights by not discussing the case or your upcoming testimony with anyone other than USDA employees with a "need to know."
2. **SPEAK IN YOUR OWN WORDS.** Don't try to memorize what you are going to say. Doing so will make your testimony sound "pat" and unconvincing. Instead, be yourself, and prior to your appearance, go over in your mind those matters about which you will be questioned.
3. Dress neatly and properly, so as not to distract from your testimony. For the same reason, avoid distracting mannerisms, such as chewing gum, tapping your pen on the table, and fidgeting. Smoking is not allowed. Present your testimony clearly, slowly, and loudly enough so those present can easily hear and understand everything you say.
4. Jurors who are or will be sitting on the case in which you are a witness, parties to the case, or family and friends of the parties, may be present in the same public areas where you will be. For that reason, you should not discuss the case with anyone.
5. When you are called into court for any reason, be serious, avoid laughing, and avoid saying anything about the case until you are actually on the witness stand. Also, do not read in the courtroom.
6. When you are called to testify, you will first be sworn in. When you take the oath, stand up straight, pay attention to the Clerk, and say "I do" clearly.
7. Most important of all, you are sworn to **TELL THE TRUTH.** Tell it. Every true fact should be readily admitted. Do not stop to figure out whether your answer will help or hurt either side. Just answer the questions to the best of your memory.

¹Some of the information in this Exhibit is taken from the brochure "Preparing to Testify" issued by the Department of Justice, United States Attorney's Office, Victim-Witness Assistance Unit, which gave permission for its use. Changes were made to make the materials address circumstances where USDA employees are authorized to testify in proceedings where the United States is not a party, but the employee's testimony arises out of his/her official duties with USDA or relating to his/her employment with USDA. OGC is solely responsible for the information presented herein.

8. If the question is about distances, times, or amounts, and your answer is only an estimate, make sure you say it is only an estimate. Beware of suggestions by attorneys as to distances, times or amounts when you do not recall the actual distance, time or amount. Do not agree with their estimates unless you independently arrive at the same estimate.

9. Do not exaggerate. Do not make over broad statements that you may have to correct. Be particularly careful in responding to a question that begins "Wouldn't you agree that . . .?" The explanation should be in your own words. Do not allow an attorney to put words in your mouth.

10. When a witness gives testimony, he/she is first asked some questions by the lawyer calling him or her to the stand. In your case, that will be the attorney who subpoenaed your appearance. This is called the "direct examination." Then the witness is questioned by the opposing lawyer in "cross examination." Sometimes the process is repeated two or three times to help clear up any confusion. The basic purpose of direct examination is for you to tell the judge and jury what you know about the case. The basic purpose of cross-examination is to raise doubts about the accuracy of your testimony. Don't get mad if you feel you are being doubted in cross-examination - that is the opposing counsel's job. **DO NOT LOSE YOUR TEMPER.**

11. A witness who is angry may exaggerate or appear to be less than objective, or emotionally unstable. Keep your temper. Always be courteous, even if the lawyer questioning you appears discourteous. Don't appear to be a "wise-guy" or you will lose the respect of the judge and the jury.

12. Although you are responding to the questions of a lawyer, remember that the questions and answers are really for the jury's benefit, if there is one, or for the Judge. Always speak clearly and loudly so that every juror can easily hear you.

13. **DO NOT** nod your head for a "yes" or "no" answer. Speak so that the court reporter or recording device can hear the answer.

14. Listen carefully to the questions you are asked. Understand the question. Have it repeated if necessary. Then give a thoughtful, considered answer. **DO NOT GIVE AN ANSWER WITHOUT THINKING.** While answers should not be rushed, neither should there be an unnaturally long delay to a simple question if you know the answer.

15. Explain your answer if necessary. Give the answer in your own words, and if a question can't be truthfully answered with a "yes" or "no," explain the answer.

16. **ANSWER ONLY THE QUESTION ASKED YOU.** Do not volunteer information not actually asked for.

17. If your answer was not correctly stated, correct it immediately. If your answer was not clear, clarify it immediately. It is better to correct a mistake yourself than to have the attorney discover an error in your testimony. If you realize you have answered incorrectly, say, "May I correct something I said earlier?"

18. The Judge and jury are interested in the facts that you have observed or personally know about. Therefore, don't give your conclusions and opinions, and don't state what someone else told you, unless you are specifically asked.

19. Unless certain, don't say, "That's all of the conversation," or "Nothing else happened." Instead say, "That's all I recall," or "That's all I remember happening." It may be that after more thought or another question, you will remember something important.

20. Sometimes, witnesses give inconsistent testimony - something they said before doesn't agree with something they said later. If this happens to you, don't get flustered. Just explain honestly why you were mistaken. The jury, like the rest of us, understands that people make honest mistakes.

21. Stop instantly when the Judge interrupts you, or when an attorney objects to a question, and wait for the Judge to tell you to continue.

22. Give positive, definite answers when at all possible. Avoid saying, "I think," "I believe," or "In my opinion," if you can be positive. If you do not know the answer, say so. Don't make up an answer.

23. When being questioned by an attorney, don't look at the other attorney or the Judge for help in answering a question. You are on your own. If the question is improper, the other attorney will object. If a question is asked and there is no objection, answer it. Never substitute your ideas about what you believe the rules of evidence are.

24. Sometimes an attorney may ask this question: "Have you talked to anybody about this case?" If you say "no," the judge or jury knows that doesn't seem right, because an attorney usually tries to talk to a witness before she/he takes the stand. You will also have talked to your agency officials and possibly an OGC attorney in order to obtain authorization to make your appearance. You should, of course, respond truthfully to this question. Say very frankly that you have talked with whomever you have talked with - just tell the truth as clearly as possible.

25. After a witness has testified in court, she/he should not tell other witnesses what was said during the testimony until after the case is over. Thus, do not ask other witnesses about their testimony and do not volunteer information about your own.

If you have other questions or problems related to testifying, please contact your State Office or the Office of the General Counsel. Their names, addresses, and phone numbers are listed below:

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